

# THE MARTHA'S VINEYARD COMMISSION

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## *Martha's Vineyard Commission Minutes for the Special Meeting of July 29, 1999*

The Martha's Vineyard Commission held a Special Meeting on Thursday, July 29, 1999, at 7:30 p.m. in the Baylies Room on the lower level of the Old Whaling Church, Main Street, Edgartown, Mass.

At 7:36 p.m., a quorum being present, Michael Donaroma, Chairman of the Land Use Planning Committee, the Selectmen's Appointee from Edgartown, and the Hearing Officer for that evening, opened the Special Meeting.

### **Public Hearing: Martha's Vineyard Commission Joint Transportation Committee.**

The first Public Hearing scheduled for that evening was the Meeting of the Martha's Vineyard Commission Joint Transportation Committee. The Notice of Public Hearing read as follows:

**"Description:**            *Meeting of the Martha's Vineyard Commission  
Joint Transportation Committee*

**Purpose:**                *Martha's Vineyard Transportation Improvement Program (TIP)  
for Federal Fiscal Years 2000 - 2005 (FY 2000 - 2005). The  
MVCJTC will be asked to recommend that the Final Draft TIP  
be submitted to the State.*

**Date and Time:**        *Thursday, July 29, 1999, at 7:30 p.m.*

**Location:**             *Old Whaling Church  
The Baylies Room  
Main Street  
Edgartown, Mass."*

Transportation planner Andrew Grant, a member of the Commission staff, had distributed to the Commission members copies of the FY 2000 - 2005 Transportation Improvement Program, to which he occasionally referred.

Mr. Grant began by describing how the Martha's Vineyard Transit Authority's planned maintenance facility had been moved up in the programming, with the funding to be completed in 2001, instead of 2002. This was a regional priority, he said, now that the widening and paving of the Edgartown-Vineyard Haven Road was complete. Michael Colaneri, a Commission member at large from West Tisbury, asked where the site of the planned facility was. "I believe, the [Airport] Business Park," replied Mr. Grant. It would be on four 1-acre lots, he added.

The schedule for the Chappaquiddick bicycle path had been moved back to 2001, continued Mr. Grant, instead of Fiscal Year 2000. This had been done so the total amount for highway and transit would not be too high for FY 2000. That had been the only other change in the TIP, he added.

Mr. Grant recommended that the following year they look at more realistic projects for submittal. "I think some of these Highway projects are pie-in-the-sky things," he said. "We really need projects that will actually be built." Mr. Colaneri asked what some of those real projects might be. Mr. Grant replied that it would mostly be bicycle paths. He pointed out that Nantucket took most of its money for enhancement programs like the construction of bike paths.

Mr. Donaroma asked how the bike paths were coming along. Mr. Grant answered that they had completed phase one of the preliminary planning for the path along the east and northeast boundaries of the State Forest. What about on State Road from Vineyard Haven to West Tisbury? asked Mr. Colaneri. "I don't think it's active, but it could be," replied Mr. Grant. "What could get it active?" asked Anne Harney Gallagher, a Governor's Appointee. Mr. Grant explained how MassHighway insisted that the Towns pay for the planning required to bring their roads up to the State standards called for if bike path funds were to be provided. For instance, on a road like Lambert's Cove Road, there could never be the room necessary to bring it up to that standard.

Directing the Commission members' attention to the budget figures, Mr. Grant pointed out that "the local numbers are all zero. At the State and Federal levels, they prefer to see more local commitment," he explained. "That comes in the form of doing the plans and having the plans ready to go, and then they kick in the bulk of the money, which is for construction."

Do we get any help from the State engineers? asked Mr. Colaneri. "MassHighway District 5, yes," replied Mr. Grant. "They have a separate budget on the State TIP."

There followed a brief discussion about funding sources for highway and complementary transportation facility plans. Tristan Israel, the Selectmen's Appointee from Tisbury, asked if there had been any discussion of funding for the Tisbury Park and Ride lot. Mr. Grant said that Fred LaPiana of the Tisbury Public Works Department had not requested inclusion in this year's TIP.

**Item #3: Approval of the Meeting Minutes of June 17, 1999 and July 8, 1999.**

Mr. Colaneri made a Motion to Approve the Minutes of June 17, 1999, as Written, duly seconded. Jane A. Greene, the Selectmen's Appointee from Chilmark, pointed out that on page 18, paragraph 2, sentence 6, County Commission representative Lenny Jason, Jr.'s reply to Commissioner at large John Best about the normal bedroom capacity was "Nine square feet minimum." Ms. Greene noted that the correct figure was 70 square feet.

[After the vote to approve the Minutes of June 17, 1999, Ms. Greene realized that she had thought that the Commission had been considering the Minutes of July 8, 1999. So the revision that she proposed was for the latter Minutes. After realizing this, Ms. Greene changed her initial Aye vote on the first set of Minutes to an abstention.]

Mr. Donaroma asked for all in favor of approving the Minute of June 17, 1999, as Amended. The vote went as follows:

AYES: J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Early; T. Israel; M. Lazerow; M. Ottens-Sargent; L. Sibley; J. Vercruysse; and R. Zeltzer.

NAYS: None.

ABSTENTIONS: M. Cini; J. Greene; B. Hall, Jr.; L. Jason, Jr.; and A. Harney Gallagher.

Then Mr. Colaneri made a Motion to Approve the Meeting Minutes of July 8, 1999, as Written, duly seconded. Ms. Greene's misunderstanding was discovered [see the bracketed paragraph above], and her vote on the Minutes of June 17, 1999 was changed to an abstention, since she had not attended that Meeting. So the above-described correction would be applied to the Minutes currently under consideration, those of July 8, 1999. The vote went as follows:

AYES: J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Early; J. Greene; T. Israel; L. Jason, Jr.; L. Sibley; J. Vercruysse; and R. Zeltzer.

NAYS: None.

ABSTENTIONS: M. Cini; B. Hall, Jr.; M. Lazerow; M. Ottens-Sargent; and A. Gallagher.

**Item #4: Reports.**

Beginning the **LUPC Report**, Mr. Donaroma gave an account of a visit the Monday before (July 26) to the site of the Pearlson Office Building in West Tisbury. The Commission members who had attended -- John Early, Richard Toole, Linda Sibley and himself -- had looked at the number of trees that would be coming down. There had been a couple of major trees, as Mr. Donaroma put it, that the members thought should be saved, if at all possible. With that in mind, they had talked about moving the building to a different part of the site, as well as the parking layout. "It was a pretty good discussion and walk-through," noted Mr. Donaroma. "They're going to rework the plan somewhat and come back to us."

Christina Brown, a Commission member at large from Edgartown and Co-Chair of the LUPC, continued the report with an account of the LUPC meeting of July 19, during which the Allen Moore division of land in West Tisbury had been discussed. Ms. Brown provided some background on the DRI, reminded the Commission members about their Concurrence Vote on this project and about the many covenants that the Applicant and the Town had worked out.

Regarding the **Aquinnah DCPC Exemption Committee**, Ms. Greene reported that the committee had met twice since the last full Commission Meeting, approving four applications for waivers. In addition, the committee had sought more information from the applicants in the cases of two pending applications. The committee would meet next at the Wampanoag Housing Office at 5:30 p.m. on Tuesday, August 3.

In addition, Ms. Greene wished to report that there had been "dissension and unhappiness and misunderstanding" about the DCPC process in Aquinnah. The Selectmen's Appointee from Chilmark continued, "We've been approached that we should just give them a list of permits that will automatically be exempted. They don't understand when I say we can't do that." Moreover, there had been talk of somebody coming forward and having the DCPC removed. Among both Town officials and residents there appeared to be "a misunderstanding of what the DCPC was," said Ms. Greene.

Mr. Donaroma questioned Ms. Greene about this situation, and she provided further details about what had been said to her both during and outside of committee meetings. "I've had people coming to my office, calling my office during work hours," she said. "I spent an hour and a half with two Town people today discussing the DCPC process ..."

As for the **Affordable Housing Subcommittee**, Chair Marcia Cini, a Commission member at large from Tisbury, announced that their next meeting was scheduled for

Wednesday, August 4, at 5:30 p.m. at her law office in Edgartown. "We have parking and air conditioning," she noted.

Michele Lazerow, a Commission member at large from Oak Bluffs, provided the **Cell Tower Study Group Report**. She said that the group hoped to get together soon and that more information was needed before they would be able to make a recommendation.

[From this point until 8:12 p.m., the sound quality of the tape recording of the Meeting was poor. MVC Secretary Pia Webster relied upon her shorthand notes for the account of that portion of the Meeting.]

Executive Director Charles Clifford mentioned in his **Legislative Update** that the Commission had been promised funding by the DEM.

Mr. Donaroma then made some announcements about pending DRIs, including that: the Windy Gates subdivision proposal (#494) was still postponed indefinitely; the Public Hearing for the Tisbury Wharf project referred by the Tisbury Planning Board set for August 5 (#474) had been postponed; and that the Vineyard Service Center 2 project would be coming to LUPC in late September instead of in mid-August.

**Public Hearing: Herring Creek III (DRI #500).**

At 8:00 p.m. Mr. Donaroma read aloud the Notice of Public Hearing for the Herring Creek III Development of Regional Impact.

*"The public is invited to a Hearing concerning the following Development of Regional Impact (DRI #500):*

- Applicant:** *Herring Creek Farm Trust  
Stuart R. Johnson and Catherine F. Shortsleeve, Trustees  
c/o General Investment and Development Company  
600 Atlantic Avenue, Suite 2000  
Boston, MA 02210*
- Location:** *Herring Creek Farm  
Slough Cove Road, Edgartown  
as registered in the Dukes County Registry District of the Land  
Court, Certificates of Title Nos. 3295, 3825, 3568, 5746 and  
5860.*
- Proposal:** *To subdivide approximately 215 acres in order to create 33  
residential lots, the "East Field Open Space" and a "Beach  
Parcel."*

***Date and Time:***        ***Thursday, July 29, 1999, at 8:00 p.m.***

***Place:***                ***Old Whaling Church Meeting Room***  
                              ***Main Street***  
                              ***Edgartown, Massachusetts***

***The Application and Plan are available for public inspection at the Commission Offices. Written testimony may be submitted prior to or during the Hearing.***

***This Hearing is held in accordance with Section 14 of Chapter 831 of the Acts of the Commonwealth of 1977, as Amended, and Chapter 30A, Section 2, of the General Laws of the Commonwealth, as modified by said Chapter 831."***

Ms. Cini, an attorney, disclosed she had once done a title search on the property in question and that she had been cleared by the Ethics Commission to participate in this Hearing.

**Applicant Presentation.**

**Stuart R. Johnson, Trustee, Herring Creek Farm Trust.**

Mr. Johnson began his presentation by distributing to the Commission members copies of the Decision of the Martha's Vineyard Commission dated November 19, 1999 regarding the second Herring Creek Trust Application. This Application was a Preliminary Plan, which the Decision then remanded to the Planning Board of the Town of Edgartown. Mr. Johnson pointed out that the 12 Conditions in the Decision were "the point of departure" for the current Application and that the Applicant had attempted in good faith to comply with each of them. Mr. Johnson said, "The guts of the Decision is that the Applicant should continue with the development plan process consistent with the principles set forth in the preliminary plan submission and the Recommendations and Conditions listed. ... We're going to speak to every one of those this evening." [A copy of said Decision can be found in the Meeting File of July 29, 1999, as well as in the DRI Decision File.]

Mr. Johnson explained how the matter had gone back to the Planning Board and that on January 5, 1999 that Board had reviewed the MVC Decision and the preliminary plan and unanimously voted that they would have no further comments. On April 15 the Trustees had made their final submission to the Planning Board, and the Planning Board had determined that it was complete. This was the submission that was now "on the table." [From this point the recording quality on the tape was better.]

On June 28, 1999, continued Mr. Johnson, they had met with the Land Use Planning Committee with "the principle purpose of determining whether we were ready for tonight.

There was a review of the submission, there was an itemization of some outstanding items, and we were charged with the responsibility of going into the world, if you will, and coming back with the complete record, a complete file, in satisfactory condition so that this Public Hearing could take place tonight."

Mr. Johnson then outlined how between June 28 and that evening he and his team had gone to work to address all the concerns that had been set forth and itemized by the LUPC and the Commission staff, what he called "the open issues and the open items." They had also conducted a site visit for the Commission members on July 25 from 9:00 until about 11:00 a.m. That evening's presentation would address those open issues and open items and comment on their resolution.

Mr. Johnson went on, "Importantly, on June 28, from that day, we have taken our submission to the MVC, we have laid it before the Board of Selectmen, the Planning Board, the Board of Health, the Conservation Commission, the Edgartown Ponds Advisory Committee. And in all instances we have indicated our preparedness and willingness to sit down with them and spend as much time as they would like, going over all the details, the issues, et cetera. We've given everyone a full opportunity to dig into the plan."

Then Mr. Johnson said that he wished to make "a couple of overarching comments. Frequently, one asks the question of, 'How I get my arms around the full, entire submission so that I can make an informed judgment?' And basically, what it is comprised of is the Environmental Impact Statement [EIS], which is dated April 15. There's a "Technical Appendix" and the "Documentary Appendix" which accompanies it. That's really the heart and soul of this proposal." He noted that, of course, the presentation that evening could not cover all the details contained in those documents.

Secondly, Mr. Johnson continued, there was the "Definitive Subdivision Plan," dated April 15, 1999; this had accompanied the EIS at the time they had made their submission. Additionally, there were several letters and memoranda that had been submitted after the LUPC meeting; these dealt with water, police and law enforcement concerns, availability of electricity, logistics regarding the beach, the archaeology, and the Massachusetts Environmental Policy Act (MEPA). Several items would be added that evening, he said, including one concerning affordable housing.

Mr. Johnson then summarized this way: "In my view we've made every effort to respect and adhere to every one of the 12 Conditions in the MVC's Preliminary Decision dated November 19. And in my view we have absolutely achieved that objective." He then turned the podium over to David Hirzel.

**David Hirzel, Planner, Sasaki Associates, Inc.**

Before Mr. Hirzel began to speak, Mr. Donaroma announced that the Hearing would have to "shut down" at 11:00 p.m. So he would allow the Applicant's team to continue for as long as was reasonable, then would turn the floor over to MVC staff, Commission member questions, Town Boards and the public. He said that he expected the Hearing to be continued at a later date, and he assured Mr. Johnson that his team would be able to complete their presentation at the second session of the Hearing.

Mr. Hirzel set up a couple of easels on which he would display enlarged photographs of the site of the proposal. He then introduced himself and described himself as planner with Sasaki Associates who had been involved with the project under discussion for over 10 years. Mr. Hirzel then distributed to the Commission members the "Presentation to the Martha's Vineyard Commission: Herring Creek Farm, Edgartown, Mass.," an outline of his presentation illustrated with small black-and-white reproductions of the color photographs on the easels. [A copy of "Presentation" can be found in the Meeting File of July 29, 1999, as well as in the DRI #500 Main File.]

Mr. Hirzel noted that he had been asked as part of the presentation to assume that for some of the Commission members this was "the first time through." He outlined what he would cover: the existing conditions; the project they were proposing; the changes that had taken place since the last time he had been before the Commission; and the responses to the LUPC questions that the Applicant had received a few weeks before.

Describing the project area, Mr. Hirzel displayed an aerial photograph and site plan of the project area, an area of about 215 acres, with Herring Creek Road to its east, Slough Cove Road to its north, and Edgartown Great Pond, Crackatuxet Cove, the Atlantic Ocean and Slough Cove to the south.

He outlined the existing conditions as 215 acres with five existing homes: two residences near the beach, the so-called Mobius House, the Sanderling House and the farm house. There was also a barn and a central field, as well as a piece of land on the site (the so-called Wood Lot) that was not entirely owned by the Applicant and was not figured into any of the acreage calculations. There was, moreover, some construction on the Aldeborgh land that was not shown because it had taken place after the survey had been completed.

Mr. Hirzel added that the wetlands on the property had recently been surveyed and staked. He pointed to where these and the dunes were on the aerial photograph and the current site plan. Together they comprised about 45 acres or 21 percent of the site. He also showed the 4.6 acres of oak woodlands, about 2 percent of the site; the 20 acres of shrub thickets, 9.3 percent of the site; the 134.3 acres of farmland and grassland, covering 62.5



percent of the site; and the developed portions of the existing site, occupying 10.6 acres, or 4.9 percent.

Also of interest to the Commission was the 100-year floodplain, said Mr. Hirzel, which was general elevation 8, with an exception where, because of topography and other factors, it pushed up to elevation 9. This last area, he emphasized, would have no leaching fields.

The regulatory framework within which the Applicant was working, continued Mr. Hirzel, was an RA120 residential zone, and they were proposing a cluster development within that zone. Overlaying the site were four Districts of Critical Planning Concern (DCPCs): Island Roads DCPC, with a 200-foot setback; the Katama Airport DCPC, encompassing the East Field; the Coastal District, which was basically an elevation 10, covering about 500 feet along the northwest side of the site; and the Edgartown Pond DCPC, which was basically the 700-foot line delineated along the southeast corner of the site.

Mr. Hirzel then walked the Commission members through the site through a series of enlarged color photographs. The first set of pictures reviewed the existing conditions in the landscape and included, among others, photographs of beach and dunes; the ponds landscape with architecture; thickets and marsh grass; the East Field and the Central Field; field edges; and woodland edges. Mr. Hirzel emphasized the horizontality of the landscape and the character of the homes as they related to that landscape.

When Mr. Hirzel came to the photograph of vegetation with architecture, Mr. Jason asked him how high the house in the photograph was. "I think it's about a story and a half," replied Mr. Hirzel. "We don't know specifically."

"That's not the whole story of the site," noted Mr. Hirzel, referring to the landscape photographs he had just finished with. The next series of photographs showed the existing settlement conditions and included pictures of: the farm complex; the fence-lined roads through the site; the Berendt home with its farm and fences; the Blue Heron House, a one-and-a-half-story structure; and the Sanderling House. Mr. Hirzel stressed the natural colors of the shingles and clapboards and the traditional Island character of the pitched roofs.

Mr. Hirzel then spoke about the proposed plan, illustrating it with a series of schematic drawings. The first such drawing was a simple illustration of the 32 lots plus the farm lot, which was where the existing farmer's house and affordable unit were and where additional affordable homes were proposed. The lots themselves averaged 4.1 acres, ranging from the smallest at 1.24 acres to the largest at 8.43 acres. The land area per lot, if one included the entire 215 acres, was 6.5 acres.

Shown in yellow on the drawing were the development envelopes, the areas in which development would be allowed. No more than 1 acre of the field and 0.25 acre of the shrub thicket would be cut for any of the homes that would be in the thicket. Moreover, continued Mr. Hirzel, those development envelopes would be clustered along the edges and organized with the existing homes to create a contiguous open space.

Mr. Hirzel touched on the "Open Space Management Plan" for the project, which described how each of the landscape types would be managed and provided recourse for the Town and management of the protected open space, which included 186 acres or 86 percent of the site. The open space of the site was made up of: wetlands and dunes, 45.5 acres or 21.2 percent of the site; oak woodlands, 4.6 acres or 2.1 percent; shrub thickets, 17.5 acres or 8.1 percent; the East Field (agricultural), 56.4 acres or 26.3 percent; the Central Field (grassland), 47.5 acres or 22 percent; transitional areas, 13.5 acres or 6.3 percent; and developed areas, 30.1 acres or 14 percent of the site.

When Mr. Hirzel was describing the shrub thicket portion of the open space, Ms. Greene stopped him and asked, "Are you indicating that shrub thicket on the parcel of land that ... you stated you don't have ownership of?" Mr. Hirzel replied, "I could certainly rerun the numbers to take out that 1.9 acres. I mean, in those total numbers we own five-eighths of the 1.9 ..." Stuart Johnson then provided the breakdown of the shrub thicket acreage. "I would prefer that you take that acreage out unless you have the title to it," said Ms. Greene. Mr. Johnson said something that could not be heard. Then Mr. Hirzel finished his outline of the various open space areas.

Mr. Hirzel explained how hedgerow plantings would create edges and screening around the developed areas, which would comprise only 14 percent of the total site. He added that all the open space would be protected in perpetuity. He also showed a site plan that illustrated the "before" and "after" of the open space protections. As for the recreation component, Mr. Hirzel explained that the beach would be open to residents and owners of rights and that the tennis courts would be open to residents only.

The planner then outlined the revision made to the plan since the Preliminary Application. Between the 35-lot plan and the 32-lot plan (the current one) there had been an updated survey completed by Doug Cooper because the original survey was over 10 years old and had never been reviewed by the Conservation Commission. Mr. Cooper had found that "Mother Nature moves wetland lines," said Mr. Hirzel. As a result, the Applicant had arrived at a revised zoning definition of the lot area, which now included no wetlands. "To enable us to continue to cluster the units in a way that preserved the maximum amount of open space, [that] stayed out of the East Field, we felt that a Special Permit for a cluster division was the proper way to proceed with the plan," he explained.

Mr. Hirzel went on to outline the Applicant's response to the Commission's Conditions and Recommendations. The number of lots had been reduced to 32 plus the caretaker's

cottage, and house lots had been eliminated from the East Field, leaving 56.49 acres for which development rights would be conveyed. In addition, the viewshed easements from Herring Creek Road were provided in the "Conservation Restrictions and Easements" document.

Another response had been the devoting of the East Field, in perpetuity, to agriculture; restrictions, if any, would be at the discretion of the Commission. Moreover, the East Field would be leased by the Homeowners Trust to an on-Island farmer; the lease would include the option to use the barn, the silo and other equipment, which would be maintained by the lessee.

As for the handling of black and gray water, there would be no leachate field within the 100-year floodplain. Those units whose leachate fields would be in that floodplain would have their leachate piped to the East Field and handled by the state-of-the-art, Title V-approved RUCK system. Mr. Hirzel noted that this would be explained in more detail by Michael McGrath, developer of the RUCK system. Homeowners desiring five or six bedrooms would also have to use a RUCK system and would seek Board of Health approval, waiver or variance for such.

Mr. Hirzel then invited **Michael McGrath, president of Innovative RUCK Systems, Inc.**, of Falmouth, to speak. To start, Mr. McGrath handed out to the Commission members a simple schematic of the system. Then he explained how the system separated the black water from the gray water and how the majority of the nitrogen was found in the toilet wastewater and the wastewater from the kitchen sink. This effluent was put through a RUCK filter, which provided an environment of bacteria which changed the nitrogen constituents (ammonium) to a form of nitrates. Mr. McGrath then distributed another handout, this one with definitions of, among other things, nitrogen. "Most of us don't know much about nitrogen," noted Mr. McGrath. "You'd be surprised," responded Mr. Donaroma.

Mr. McGrath then spoke in some detail about the conversion by the RUCK filter of ammonium to nitrates at about a 99 percent rate. During the denitrification process, the freed nitrogen would go up through a pipe vent and into the air, he said. To obtain Title V approval, he had had to test RUCK systems in nitrogen-sensitive areas. The average total nitrogen concentration had been below 10; it ranged from 2 parts per million to almost 19 parts per million of total nitrogen. In addition, there had been no failures of RUCK systems with new construction. This was significant because even though the amount of nitrogen was the same, with new construction there was less water, so it was more concentrated. Nevertheless, the RUCK system could handle it.

Mr. McGrath went on to explain the system as it would be utilized in the East Field. It would be a fail-safe system in case there was a hurricane, for instance, and the pump station was not powered. There would be a bank of forcemains, encased in concrete, with

a series of manholes that would provide enough spare forcemains to allow for one forcemain for every three houses. Because they would be encased in concrete, there would be no leakage, he added.

Ms. Greene asked, "How many forcemains are you proposing? You said, 'a bank of forcemains.' Can you give us a concrete number? And the size of the forcemains, please?" Mr. McGrath replied that he would have to refer to his notes, which he did. There would be 36 forcemains in the bank, he said.

Mr. Colaneri wanted to know how far below the farmland the units would be located. For instance, would the farmer be able to deep-plow? Mr. Donaroma had a question about the effect of the system on the agricultural use of the field. Mr. McGrath described how the units would be 4 feet down and how the filter provided a chimney effect with roof vents, which would be located along the road that ran alongside the East Field. He noted that the bacteria involved did create heat. The system, he added, exceeded the removal efficiencies required by the DEP. The time was 9:00 p.m.

Ms. Lazerow asked Mr. McGrath if he had any pictures of the vent pipes to which he had referred. "They're 4-inch PCV," replied Mr. McGrath. "What's coming out of those things?" asked Ms. Greene. Mr. McGrath quickly drew a schematic, illustrating the stratified filter aerobic treatment and explaining how it worked. He noted that the RUCK filter produced no odor. By this point Mr. Hirzel had located some pictures of similar vent pipes, as requested by Ms. Lazerow. He (Mr. Hirzel) then explained how the 3-foot venting pipes would be integrated into the fence along the road that ran by the East Field and the 12-foot pipes, into the hedgerows. "So, they're basically invisible," he said.

In answering Mr. Colaneri's earlier question about plowing, Mr. McGrath said that the farmer would be plowing from 9 to 12 inches deep and that the RUCK system units would be set below that. The system would not interfere with the agricultural use, he said. Then Mr. McGrath had an exchange of questions and answers with Benjamin Hall, Jr., a Commission member at large from Edgartown, regarding the basic schematic; the separation of the black from the gray water; the filter that separated those two types of wastewater; whether there would be a grinder pump for the black water (yes); the fact that there would be two pipes coming from each house; and the provisions that were in place should a hurricane knock out power. It seemed to Mr. Hall that if the power were out for one day, the site's generator's could handle the situation; out for two days, though, and his impression was "you'd be up the blank."

Mr. Best said, "Ben asked if you would have grinder pumps ... So there's going to be a common RUCK filter for all these houses?" "No," said Mr. Hall and Mr. McGrath at the same time. "Each house is going to have black water septic, gray water septic?" asked Mr. Best. "Yes," said Mr. McGrath. He then explained how each house was going to have a black water septic tank and a pump and a gray water septic tank and a pump.

Ms. Greene asked, "Can you tell me the depth of the pump stations, please? When I say 'depth,' I mean the size, the height of the pump station." Mr. McGrath pulled out a publication and went to page C-10-2, which showed a typical professional 1,500-gallon pump station. He then explained some of the details of the photograph. "Are you telling me that the tank and the grinder pump are the same thing?" asked Ms. Greene. "No, the pump's inside the tank," responded Mr. McGrath. "And what is the depth of the tank?" asked Mr. Donaroma. Mr. McGrath replied that the tank was 6 feet tall. "And what's the depth of the groundwater there?" wondered Mr. Donaroma. The tanks were adjusted for the tides, said Mr. McGrath.

"I'd like to know how you get a 6-foot tank, how you're going to have your ground separation if you're at an 8-foot elevation," said Ms. Greene. Mr. McGrath again explained how the system had been adjusted for the tides. Are you talking about high pond or low pond? asked Ms. Greene. It was adjusted diurnally, replied Mr. McGrath. The groundwater acted like the tides; it reflected the Atlantic Ocean, he said. The elevation would be adjusted for the tides. "And the pond has no effect?" asked Mr. Donaroma. The pond would have an effect of less than a half inch, answered Mr. McGrath.

Mr. Colaneri wondered, "The pictures that you sent around, examples of the system ... How many gallons per day or how many bedrooms is this system designed for?" Referring to one of the pictures, Mr. McGrath said that this particular system was for three bedrooms; it was about 11 feet by 16 feet. The design was for two septic systems side by side (for the black water and the gray water), plus a leaching system.

Ms. Lazerow said, "I have a little confusion here about the location of the vent pipes." Mr. McGrath then showed her on the site plan where these would be located.

Linda Sibley, a Commission member at large from West Tisbury, said, "I'd like to take a whack at the pond issue again ... I think we all understand what you mean about groundwater being diurnal and being affected by the tides. But presumably the groundwater is affected by the rise and fall of the ocean; the groundwater is also affected by the rise and fall of the Great Pond. The Great Pond doesn't rise and fall diurnally; it rises and falls according to whether it's opened or closed. So I think the question in my mind is, ... when the measurements were taken, was the Great Pond closed and high or was the Great Pond opened and low?" Mr. McGrath deferred to **Steven Smith, president of GeoHydroCycle, Inc.**

Mr. Smith explained how over a 13-month period he and his team had studied and measured the groundwater elevations along Edgartown Great Pond and Crackatuxet Cove, and during that time they had "very good readings" at high pond, which was 4.4 feet at the time. He noted that some of the elevations that one would expect to be 3.4 feet

were 4.4 feet at high pond. These elevations, however, were still more than a foot below that Title V requirements, he said. Title V required a minimum vertical offset of 1 foot, and the plan submitted by the Applicant allowed for more than that.

"Were these the tests that you took in the early 90s, or are these new tests?" asked Ms. Greene. "Although our tests were done during the early 1990s," replied Mr. Smith, "the geology hasn't changed, especially near the pond. There's been no construction beneath the water table, and the geology is the same." He added that they had "a very good estimate" of what the groundwater would do during a high-water cycle, even during a breaching of the Great Pond.

Mr. Hall remarked that Mr. Smith had said "that the groundwater level could be at high pond 4.4 feet above sea level. Is that correct?" "Excepting locations down around this part of the Central Field," replied Mr. Smith, pointing to an area on the site plan. "And now you're talking about putting a 6-foot-deep tank into land that is at the 8-foot contour. Presumably now you are at one and a half feet into the groundwater at high pond. Is my math right?" asked Mr. Hall. Mr. Smith answered that the inverse elevation was 6.1 feet and the groundwater was 4.4 feet at the highest; so that was a difference of 1.7 feet. "So your tank has 1.9 feet in depth?" wondered Mr. Hall.

Mr. McGrath explained that the top of the tank is generally 1.1 feet (below the surface) and there would be 9 inches of cover. So you're not going to have to put fill into any of these areas to install the tanks? asked Mr. Hall. "There's no fill required to install the black water pump station or the gray water pump station in the gray-colored lots," replied Mr. McGrath, referring to the site plan.

Jim Vercruysse, a Commission member at large from Gay Head, asked Mr. McGrath to confirm that Mr. Hirzel had stated that the delineation of the wetland areas had changed since the early 90s. [See page 9 of these Minutes.] "That's in the wetlands, not in the water table," said Mr. Hirzel. Mr. McGrath explained, "What has happened since 1998 is, the definition of wetlands has changed. Prior to about 1996, wetlands were defined as an area of land that had 50 percent or more of wetland plan indicators. From 1997 on, it's a combination of wetland plans and the soil conditions. So what you have most likely is not a change in wetlands, but a change in the definition of wetlands." "So the water level in the ground hasn't changed since the 1990s?" asked Mr. Donaroma. "No," replied Mr. McGrath.

Ms. Greene referred to some test wells that had been, she believed, very close to the edge of Crackatuxet Cove in the early 90s. She wondered if the wells around Edgartown Great Pond "were now more into the water because of the change in not only the delineation of the wetlands but maybe because of movement in the Great Pond. Mr. Smith replied that he had looked at the wells the day before. "They're in the same condition, they're in the

same shape," he said. "There's no change in water levels approaching them from the pond or Crackatuxet Cove ..."

Mr. Israel referred to Mr. McGrath's remarks about the changes in the parameters of the wetlands' being the result of a change in definition. "Is that why your wetlands delineation changed?" asked Mr. Israel. "I assume, yeah," replied Mr. Hirzel, "that would be my assumption." He added that the Edgartown Conservation Commission agreed that the delineation was in accordance with current standards and definitions.

The Hearing Chair, Mr. Donaroma, asked for an end to Commissioner questions for the time being and reminded them that the Hearing would be continued for at least another session. He then offered the Applicant 15 more minutes to present their plan.

Mr. McGrath finished up by comparing the efficiency of the six-bedroom RUCK system with a four-bedroom Title V system. The system for the larger house, he said, actually produced only 71 percent of the nitrates that the Title V system did.

Mr. Hirzel then continued his presentation on the Applicant's response to the Commission's Conditions and Recommendations. He explained how the club facilities for the proposed beach club had been eliminated. Additionally, there would be no on-site restrooms, parking lots or associated facility. The use of the tennis courts would be restricted to the homeowners and lessees and their guests.

Mr. Hirzel then related how the Applicant would establish an agreement of cooperation with the Edgartown Ponds Advisory Committee for the management of the sluiceway. Next, he moved on to the subject of affordable housing.

First of all, he stated, the Applicant intended to adhere to the Commission's affordable housing policy. He displayed a photograph of the barn structure, which would be renovated for the construction of two affordable apartments. They had spoken to the Dukes County Regional Housing Authority (DCRHA) and Habitat for Humanity representatives about producing the affordable units off-site. However, the Commission's policy seemed to favor an on-site location, he added.

Mr. Hirzel then outlined the Environmental Impact Statement submitted by the Applicant (Sections I through VI, comprising three notebooks) as well as the Definitive Subdivision drawings. These, he said, accurately and fully described the proposed plan. In addition, all technical studies done previously for other submissions had been reviewed and revised in light of the latest submission.

Going into some detail on the Environmental Impact Statement, Mr. Hirzel related how in response to the Commission's Conditions and Recommendations, the statement addressed issues of population changes; traffic; low and moderate income housing; municipal

services and any increase in assessed valuation; utilities; stormwater drainage patterns; solid waste; soils; areas of vegetative removal; water supply protection; scenic vistas; harmony with surrounding development; open space; and the Management Plans for Water Quality Protection, Wildlife Habitat Protection and Scenic Vista Maintenance.

Visual impact had been addressed in several ways, Mr. Hirzel continued. The ultimate goal was to maintain the rural agricultural character of the site. To that end, the homes would be sited away from public view from the vantage of Herring Creek Road and Slough Cove Road and would be sited within development envelopes located to preserve open space. Hedgerows would be planted to screen the homes and to tie them to the landscape. In addition, the homes would be subordinate to the surrounding vegetation.

The architectural guidelines provided would prescribe the style of the houses, Mr. Hirzel went on. They called for a 26-foot height limit; pitched roof and gables; clapboards or shingles; traditional style; restricted colors; and garages limited to a two-car capacity. Within the development envelopes, tennis courts would be prohibited, hard surfaces and lawn areas would be limited, and plantings would be naturalistic and native. Finally, the roads on the site would follow existing alignments and be kept to a minimum width, and the existing vegetation would be maintained.

As Mr. Hirzel went through these details, he displayed a series of color photographs that demonstrated how the visual impact of the proposal would be managed. At one point he explained in some detail how the roofs would be pitched so that at a maximum the heights of the houses would be one and a half to one and three-quarters stories tall. At another point he contrasted some existing off-site buildings that were representative of the guidelines with some Crackatuxet Cove homes that were not consistent with the Island vernacular and were not screened by natural vegetation. "They [the Crackatuxet Cove homes] have much more impact on the view and the horizon than those that are lower, traditional in scope and have the lower roof lines," he observed.

Ms. Greene asked Mr. Hirzel if he knew how tall the Crackatuxet Cove houses in the photograph were. "The three-story ones?" wondered Mr. Hirzel. "Well, you're saying these are all taller than the tree line. How tall are they?" Ms. Greene. Mr. Hirzel said that they were about 32 feet high but that he was not certain.

In closing, Mr. Hirzel quickly went through the ways in which the Applicant had addressed the concerns of the Land Use Planning Committee. Among them were: a review of the Traffic Study, the Nutrient Loading Study and beach logistics with Commission Staff; a review of archaeological issues with Public Archaeology Laboratory (PAL); the solicitation and receipt of letters from the Police Department, the Fire Department and the Water Department, as well as ComElectric and Bell Atlantic; contact with the Board of Selectmen, the Conservation Commission, the Planning Board, the Board of Health, and the Ponds Advisory Committee; the delivery of additional



engineering documents; a response to questions about the Massachusetts Environmental Protection Act; and the conducting of a site visit.

Mr. Donaroma thanked Mr. Hirzel for his testimony. Then he called for a five-minute recess. The time was 9:43 p.m.

### **Staff Report.**

At 9:48 p.m. Mr. Donaroma reopened the Meeting. **David Wessling, the coordinator of the DRI process at the Commission**, referred to the document "Staff Notes: Herring Creek Farm Trust (DRI #500)," dated July 28, 1999 and written by Mr. Wessling. [A copy of said document can be found in the Meeting File of July 29, 1999, as well as in the DRI #500 Application File.]

Mr. Wessling outlined the contents of the report, which began with a summary of the proposal and proceeded to planning considerations, such as groundwater quality, affordable housing and beach access. The report also contained the Findings and Conditions from the Written Decision for DRI #486 (the Preliminary Plan), as well as Staff Comments from Bill Wilcox on nitrogen loading, Andrew Grant on his traffic impact assessment and Christine Flynn on affordable housing. Finally, the report contained copies of letters from Fred R. Domont of the Water Department, Chief of Police Paul V. Condlin and concerned residents Frank and Ann Pellegrino and Mary Ventura.

Mr. Wessling went into some detail about the letters from Town Officials. The Superintendent of the Water Department, Mr. Domont, wrote that his department had the capacity to provide water service to the proposed subdivision. "It is general policy that the Water Department allows water main extensions, provided that the individual, developer or corporation pay for all costs related to a water system installation," he wrote. In his letter Chief Condlin indicated that he had no serious concerns about the project. "At this time I do not see any public safety issues that would cause me to have a serious law enforcement concern. I do not feel a need on my part to either approve or disapprove ... the project," he wrote.

Mr. Wessling continued that, in addition, that afternoon a letter had come by fax from the Edgartown Board of Selectmen, which stated in part that they had "serious concerns about Herring Creek Farm Trust's proposal to subdivide approximately 215 acres in order to create 33 residential lots. ... The fragility of the area surrounding the proposed subdivision is not secret and should be foremost in everyone's mind when considering this request. Our other area of concern is the type of septic system that will be installed for the residences, especially in light of the Wilcox report." The letter was signed by Selectmen Margaret E. Serpa and Arthur Smadbeck. [On August 2, 1999, a copy of the letter arrived via the U.S. Postal Service that was signed as well by the third Selectmen, Fred B. Morgan, Jr.]

Finally, there had been a letter faxed that day by the Edgartown Ponds Advisory Committee, the members of which were requesting more time to study the materials submitted by the Applicant. Their initial concerns were "the proposed development's density in close proximity to the pond, the impact of the proposed recreational component of the project, and the overall effect on water quality and wildlife." They also wished to discuss the future of the sluiceway with the Applicant.

Mr. Wessling then turned to the subject of nutrient loading, an area of disagreement between the Commission Staff and the Applicant's team. He asked **the Commission's water quality expert, William Wilcox**, to address this issue.

Mr. Wilcox began by reminding the Commission members of his recently published study of Edgartown Great Pond and the establishment of an interim nutrient loading limit for the pond of 2.54 kilograms per acre per year (about 5.6 pounds of nitrogen per acre per year). Approximately 100 acres of the development site was within the Edgartown Great Pond watershed, he said, so that would translate to about 560 pounds allowed yearly for those 100 acres.

Mr. Wilcox explained how the proposed dwellings would fall into three different watershed systems: those always in the Great Pond watershed (seven systems, plus the 13 RUCK systems); those always in the Crackatuxet watershed (six systems); and seven systems in both watersheds for different portions of the year, depending on the elevation of the water in the Great Pond. Mr. Wilcox had used this breakdown of the sewage disposal system locations as a reasonable means to estimate the nitrogen loading to the individual ponds.

Mr. Wilcox believed that Mr. McGrath's RUCK system provided for good nitrogen removal, and in Mr. Wilcox's calculations he had used the numbers provided by Steven Smith, which he thought were also good. It had been agreed that all septic system in the Great Pond watershed and in the transitional area where the groundwater sometimes flowed into the Great Pond and sometimes into Crackatuxet would be equipped with RUCK system. The resulting loading to the Great Pond, he said, could be expected to be 895.4 pounds each year, assuming that the six-bedroom dwelling would produce 660 gallons of effluent per day, occupancy in the home was year-round, and the RUCK system output was 19 milligrams per liter. In addition, lawns would release a total of 105 pounds of nitrogen per year, about half of which would be expected to reach the Great Pond.

If one were to add the loading from the 55-acre farm (a minimum of about 14 pounds a year to a maximum of 1,312 pounds annually), then the total loading to the Great Pond would range from a maximum of 2,260 pounds per year or 22.6 pounds per acre per year down to 962.2 pounds or 9.6 pounds per acre per year.

Mr. Wilcox pointed out that a reasonable argument could be made that with summer-only occupancy, fewer than 10 people in residence, and a RUCK output of 12 milligrams per liter, the loading from sewage disposal could be cut by up to 50 percent over the preceding estimate. The resulting annual loading would then range from a minimum of 5.1 pounds per acre up to 18.1 pounds per acre; the minimum number would meet the Great Pond nitrogen loading limit (5.6 pounds of nitrogen per acre per year).

Crackatuxet was "a big unknown," said Mr. Wilcox. He believe that its water was closer to fresh than that of Edgartown Great Pond, but good data on Crackatuxet, for instance, on the bathymetry (the measurement of depth) of the cove or the rate of groundwater influx to it, was lacking. Therefore, a nitrogen loading limit for it had not been established.

The cove would receive the sewage from six proposed systems using conventional Title V septic systems, plus sewage from half of the transitional groundwater area systems. That would amount to 445.6 pounds per acre. In addition, about 52 pound of nitrogen from lawn fertilizer and a range of 14 to 1,312 pounds from farm activity would be produced annually. This would bring the total to 5.1 pounds per acre per year up to 18.1 pounds per acre per year.

Mr. Hall asked for some clarification about the Great Pond loading numbers from the development. Mr. Wilcox verified that those numbers were for the 100 acres that lay within the watershed, not for the entire 215 acres. Mr. Hall also wished to confirm some loading limit numbers with Mr. Wilcox, which he did. Mr. Wilcox added that his estimates were "conservative on the low side." Then Mr. Hall observed that even after mitigation, no matter what the Applicant did, the resulting nitrogen loading would exceed the loading limit for the Great Pond. Mr. Wilcox explained that the numbers were "flexible," but that when one went up to two to three times the loading limit, "you've got problems."

Mr. Wilcox then talked about possible mitigating measures. One approach would be to limit the nitrogen loading through monitoring and metering, for example, by establishing an water budget for the site. Another would be to limit the activities on the site, for instance, to plant a legume hay crop, which would add very little nitrogen to the system, instead of a row crop, which would produce about 1,300 pounds of nitrogen per year.

Mr. Best wished to clarify the assumptions that had been made when coming up with the numbers that Mr. Wilcox had provided. Mr. Wilcox went over some of the material already covered in his presentation. So the mitigation through lessened activity, for instance, building the homes with four bedrooms instead of six, would still involve the use of the RUCK system? asked Mr. Best. That's right, replied Mr. Wilcox.

Mr. Best then asked: "Do RUCK systems, to your knowledge, have some of the same fluctuating performance problems that are prevalent among other enhanced systems when

you use them seasonally?" "Yeah, I think there's a startup period," said Mr. Wilcox. "I've been told a couple of weeks from one engineer, and from another I've been told, you know, a matter of a few weeks to maybe a month."

Mr. Donaroma interjected that he wished to get to the audience, and he wondered if Mr. Wilcox could finish up soon. Mr. Wilcox summarized the possible effects of irrigating row crops, which could have some effect on the existing wells in the area. "I think that needs to be evaluated," he said. Also, a maintenance contract for proper operation of the RUCK system was needed; Mr. Wilcox believed that the Applicant had already begun to address this concern.

Mr. Donaroma asked if there was already a problem with the existing wells near or on the site. Mr. Wilcox replied that studies done in the early 90s indicated that there were some salinity problems fairly far down that could be exacerbated by large withdrawals from the groundwater for irrigation. "You know, if you put in a large water withdrawal well," he observed, "you could conceivably draw up saltwater in from the margins of the upland in toward the center of the area. Anyone right along the shoreline could run into a little bit of trouble."

Ms. Greene asked Mr. Wilcox for "ballpark figures" for the nitrogen loading from the RUCK system as compared to a Title V system. Mr. Wilcox replied, "The numbers are in the range of, for these size houses, about 47 pounds per year for Title V and about 38 pounds per year for RUCK. Those are Steve [Smith]'s numbers. I think they're pretty good."

#### **Testimony from Town Boards.**

Mr. Donaroma asked for testimony from Town Boards. The first representative to speak was **Paul Bagnall of the Edgartown Shellfish Department**, who began by noting that the Applicant hadn't "touch[ed] base" with his department. "We're interested in seeing the sluiceway returned to working order," he said. "When I say 'working order,' I mean return to the order of conditions of the mid-70s, which allows us drainage of Edgartown Great Pond during the high states of the pond. For whatever reason, Herring Creek Farm stopped maintaining the sluiceway in the early 90s. It's filled in to the point that it no longer serves to drain the Great Pond, and we would be interested in both replacing the sluiceway for height control in Edgartown Great Pond as well as allowing additional herring into the pond in the spring."

Next to speak was **Steve Ewing, representing both the Edgartown Ponds Advisory Committee and the Conservation Commission**. Mr. Ewing began by reading aloud a letter dated July 29, 1999 by the Ponds Advisory Committee (PAC). [A copy of said letter can be found in the Meeting File of July 29, 1999, as well as in the DRI #500 Main File.] In summary the letter stated the committee's concern about the development's

density in close proximity to the Great Pond, the impact of the proposed recreation component of the project and the overall effects on water quality and wildlife.

Since the committee had only recently received the Applicant's submission, Mr. Ewing continued, they would need more time to review it. The committee also asked the Applicant to add to the plan the 100- and 300-foot zones in addition to the 100-year flood zone. The committee also wanted to know more about plans for boating access from the property and impacts on the scrub thicket, and to discuss the future of the sluiceway.

As for the Conservation Commission, that body had voted to send the Applicant's Declaration and Covenants and the proposed easements and conservation restrictions to Town Counsel for review and comment. The commission had also requested a true-to-life rendering of the project, showing clearly the resulting public vista, especially from the waters of Edgartown Great Pond. In addition, the commission recommended reducing the areas of lawns and landscaping to less than what it generally allowed.

As the Ponds Advisory Committee had, the Conservation Commission requested a delineation on the site plan of Zones 1 and 2, in addition to the 100-year floodplain. They also wished to review the open space management law to see how it would apply to the Herring Creek project. Moreover, the commission believed that the density of the plan should be lower and that more information on the RUCK system was needed. Mr. Ewing added that the commission would have more comments after they conducted a full review of the Applicant's submission.

**Matthew Poole, the Edgartown Health Agent**, read into the record a letter dated March 3, 1999 that he had written to Michael McGrath of Innovative RUCK Systems, Inc. following Mr. McGrath's attendance at a Board of Health meeting on February 18, 1999. [A copy of this letter can be found in the Meeting File of July 29, 1999, as well as in the DRI #500 Main File.] The letter noted that all septic disposal applications for greater than four bedrooms would require a Variance from the Board of Health and that the board would require more site-specific data and information before it could make any decisions about the RUCK system. All in all, the board reserved comment until the complete Application had been submitted.

After finishing the letter, Mr. Poole stated that he would like to register two questions: 1) Has the high groundwater table been determined based upon the soil morphology in addition to monitoring pond levels? and 2) What is the volume of wastewater being proposed for disposal in East Field?

**Bill Elbow of the Edgartown Board of Health** asked that consideration be given to the groundwater in terms of the six-bedroom houses that were being proposed. He also had questions about the duct vents in the trees and other aspects of the RUCK system.

Mr. Donaroma asked for testimony from members of the public in favor of the proposal; there was none. Then he asked for testimony from members of the public in opposition to the proposal.

### **Testimony from Members of the Public in Opposition to the Proposal.**

**Michael Wild of Edgartown**, stated that he and his sister, Rebecca Baxter, owned 17 acres that were surrounded by the site of the proposal. Mr. Wild provided a history of his family's association with the land and pointed out the heirs to the property, who were sitting in the audience. Then he noted that he was "astounded" that there were not more people in attendance at that night's Hearing.

Mr. Wild recalled his three years as Executive Director of the Commission, and he spoke of "the item on the annual budget that made my blood run cold ... and that was the item called Unanticipated Legal." He related how the legal expenses related to the Herring Creek Farm proposals over the past 10 years had run to the hundreds of thousands of dollars and how the law suits often became "creatures in themselves."

Mr. Wild then explained a bit about the agreement signed in 1969 between the Cohans and the Wallaces about any future development on the land that the Cohans were selling the Wallaces. He could not understand, he said, how the Commission could be reviewing and approving a project in spite of that legal agreement.

Mr. Wild also expressed concerns about the houses being built on the floodplain, describing how far up the waves had broken during Hurricane Carol in 1954. He displayed to the audience a colored site plan that showed clearly the 10-foot contour. "Now I don't know what school of thought puts 3,000-, 4,000-square-foot homes in a floodplain," he said. "It's just not good practice, period. And I don't care if you pump your septs to the moon. And the people who are going to thank you are the invisible future owners of these lots."

Mr. Wild then spoke of the site line of the area that would be destroyed by the proposal. He also recommended that some of the house be moved back to the East Field and away from the floodplain. Finally, he said, "I admonish you all to go to the site ... You must go there. If there was ever a place on the Vineyard where less is more [this is it]... This does not make sense."

**Janet Aldeborgh of Edgartown** introduced herself as the daughter of Ben and Hildegard Cohan, who had sold most of the property in question to the Wallaces in 1969. She then read from a prepared statement [a copy of which is in the Meeting File of July 29, 1999, as well as in the DRI #500 Main File]. Her statement discussed in some detail the agreement signed by the Cohans and the Wallaces at the time of the sale and the law

suit that the Wallaces had brought against Mrs. Aldeborgh and her family for attempting to exercise their right to buy back the property as provided for in that agreement.

In February of 1999, the statement continued, the court had declared that the agreement was in fact enforceable. "If the Commission were ever to approve this plan, then the Wallaces would have 35 house lots to sell. The Agreement says that they cannot sell them without first offering them to us. We will buy them as stipulated under the Agreement. So the consideration of this plan is a waste of the Commission's time."

Mrs. Aldeborgh reminded the Commission that it had to test every request against the criteria set forth in the enabling legislation and that one of those criteria was that probable benefits had to exceed probably detriments. "The statute says that the Commission shall consider factors 'even if they are indirect, intangible or not readily quantifiable,' and whether 'the proposed development would favorably or adversely affect other persons and property,' taking into account 'circumstances peculiar to the location.' Mrs. Aldeborgh then outlined the special circumstances that surrounded the property and provided more details about the Wallaces' efforts to circumvent the stipulations of the agreement.

Mrs. Aldeborgh ended by saying, "On a final, and personal, note, I would like to urge the Commission to understand the fact that allowing this development proposal to go forward would work a tremendous harm upon the Cohan family and others who own property in the area, and would make a mockery of the legal victory we were able to obtain when the Wallaces sued us."

Next to speak was **Mark Nelson, a principal with the firm of Horsley & Witten, Inc., and a hydrogeologist and engineer by training.** He said he was speaking that evening on behalf of the Great Plains Conservancy, a citizens' group concerned about the area in question. He and his colleagues had begun a preliminary review of the plan, and that evening he wished to present some of their findings.

Mr. Nelson said that they had discussed basically four issues: the nitrogen loading; the hydrology of the site; the special habitat of the site; and the specific design of the special septic systems. He wished to speak that evening about the first two.

The nitrogen loading limits for the plan, said Mr. Nelson, were clearly above the recommended loading limits for the Great Pond. He then referred to some of Mr. Wilcox's presentation about the nitrogen loading levels proposed for the site. He reminded the Commission members that at the point that one exceeded that limit, the Great Pond would become degraded. He pointed to the drinking water standard of 10 milligrams per liter. If one aimed for 10 milligrams, one would have to shut down the supply; the planning standard was half that. "You really want to plan for the limit with Edgartown Great Pond," he said.

Mr. Nelson also questioned the nitrogen loading assumptions that were used in the Applicant's calculations. It appeared to him that the numbers were based on four-bedroom houses, not on six-bedroom ones.

Finally, regarding the hydrology of the site, Steven Smith had said that the studies done in the early 90s were adequate and that the geology of the site had not changed. "I think for the most part, that's true," said Mr. Nelson. "However, this is probably one of the most dynamic geologic places in southern New England. Granted, we're talking geologic time here. But the changes that have taken place include Hurricane Bob, ... the Halloween nor'easter, the Hurricane Grace combination, more recently known as 'The Perfect Storm,' have changed the shoreline in this area, potentially changing the groundwater as well between the two ponds and towards the Atlantic Ocean." Also, there had been changes in water supply demands since those studies had been completed. And finally, the change in the sluiceway over the 90s could have had an effect on the groundwater, said Mr. Nelson.

Mr. Donaroma then announced that the Hearing would be continued until early September, then asked the Applicant to summarize before ending for the evening.

#### **Stuart Johnson, Trustee, Herring Creek Farm Trust, Summary Statement.**

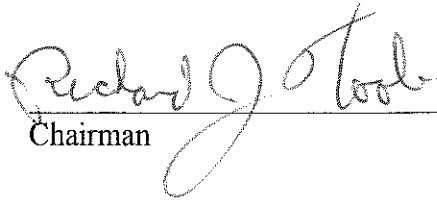
Mr. Johnson stated, "My highest interest is learning as much as I can from the members of the Commission about the issues which they want addressed ... For example, we have done some preliminary analyses of Bill Wilcox's study -- we just saw it tonight -- and without getting into detail, the mathematics, I think they're different. Bill has been very cooperative. He has been very willing to meet with us and exchange on a very systematic basis ... That's a process that ought to continue."

Referring to the Wallaces' 1969 agreement with the Cohan, Mr. Johnson observed, "That is a private matter, and as you know, there are always two sides to a story, and I'm not getting into it here. I would like to stick with just the issues."

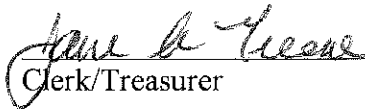
Lastly, Mr. Johnson said that Michael Wild "actually had made a good point, which is, there are trade-offs, and when we are trying to energetically move towards preserving the visual experience of the East Field, we can't ignore the fact that something has to move because of it. I am a very open-minded person when it comes to doing this plan. And the fact that the East Field is now empty of homes is a reflection of that fact. And that's all I'll say."



Mr. Early made a Motion to Adjourn the Meeting, which was duly seconded. The Meeting was adjourned at 10:56 p.m.

  
Chairman

8/30/99  
Date

  
Clerk/Treasurer

8/30/99  
Date

PRESENT: J. Best; C. Brown; M. Cini; M. Colaneri; M. Donaroma; J. Early; J. Greene; B. Hall, Jr.; T. Israel; L. Jason, Jr.; M. Lazerow; M. Ottens-Sargent; L. Sibley; J. Vercruysse; R. Zeltzer; and A. Harney Gallagher.

ABSENT: R. Toole; T. Henson, Jr.; M. Allen; and M. Bolling.

*Summary of Revisions to the  
Meeting Minutes of July 29, 1999  
Proposed by Commission Members  
in the Meeting of August 19, 1999*

[An excerpt from the Meeting Minutes of the Regular Meeting of August 19, 1999 follows immediately. It describes the actions taken by the Commission with regard to the Minutes of July 29, 1999.]

Page	Paragraph	Sentence	Revision
--	--	--	Under the testimony of Michael McGrath add the following: "Mr. McGrath stated that he was licensed for 1,000-gallon systems. His testimony also included the fact that 1.5-inch forcemain lines would be running from the Ruck Systems of the houses that were planned for the floodplain."
11	2	1	Insert the word "agricultural" after the semicolon so that the sentence reads: "Another response had been the devoting of the East Field, in perpetuity, to agriculture; <i>agricultural</i> restrictions, if any, would be at the discretion of the Commission."